



Town of Tyngsborough

Board of Appeals

Town Hall-25 Bryants Lane
Tyngsborough, Ma 01879-1003
(978) 649-2300, Ext. 112

APPROVED

Board of Appeals Meeting Minutes for October 13, 2011

Members present: Robb Kydd, Chairman, Chris Mechalides, Cheryl Bradley, Claire Cloutier, Joseph Polin, Scott Bordeleau and Donna McPartlan, Administrative Assistant.

6:30PM: Meeting called to order by Chairman Robb Kydd

NEW START REALTY, LLC., – 276 MIDDLESEX RD.; Assessors Map 20, Lot 36; Request a Variance of Zoning By-Laws 2.11.30 AND 2.11.44 to keep current business uses but increase residential rental units from 2 apartments to 3 apartments in a B-2 Zone *Advertised in the Lowell Sun Thursday, June 30, 2011 and Thursday, July 7, 2011 ← continued from July 14, 2011; August 11, 2011 and September 8, 2011*

The Legal Notice was read. Town Boards notified. Abutters Notified. No abutters were present for or against the applicant. Chris Mechalides and Scott Bordeleau were not present at the original meeting. The four members at the initial hearing date were present to vote tonight. They were Robb Kydd, Claire Cloutier, Joe Polin and Cheryl Bradley. Continuances were due to membership composition and scheduling.

Attorney Nicosia was present representing the applicant, NEW START REALTY, LLC. The limousine company is no longer at the property. Other than the two residential rentals, there is nothing else coming in. He will be revisiting getting some other business in there in the future. Two lagging issues were that the Board of Health Comment about the septic capacity. The Board of Health town engineer, Matt Waterman has attested that there is, in fact, capacity there and resolved the issue and the Board of Health has approved it. The other issue raised by Joe Polin was that at the time of the original construction of the garage was there a plan to put an occupant upstairs or was it built exclusively for a garage. Attorney Nicosia met with Paul Welcome and went through old building permits and plans. Building Commissioner, Paul Welcome, written comments "After reviewing the files on this matter, it appears that when the garage construction was approved, it was the intention of the property owner that he would be seeking approval for some type of occupancy on the second floor space at a later time." It was not

applied for or granted. At the time the garage was permitted it was not permitted exclusively for a garage space.

The other issue that arose was that the garage encroaches, when it was put up, but there was an easement to do that which was obtained from the neighbor. That is part of the building department file which is signed by the neighbor, which remedies the encroachment issue.

Joe Polin also reviewed the old building permit files going back to 1993. He checked with our board, and the documentation presented to the board indicated that those buildings were not to be used at that time for any permanent use for anything other than storage down below; the upstairs was to be used for storage only. It was written on at least two documents that he signed on conditions for him getting those permits. Joe Polin states that none of the documentation ever indicated that it would be housing space.

Attorney Nicosia has the letter from Belley Limousine that was circulated as part of the 1999 permit application, in 1999 which states that when he is ready to use the upstairs for offices, he will reapply for proper permits and have a septic design for this garage. As part of the application package it was openly expressed that there would be occupancy in the upstairs. It was never discussed for residential use, but it was discussed for occupancy of a business use which would depend on parking space. There was ultimately going to be some development there. It would be a bigger issue if it was never to be developed and only used for storage. If it was some form of occupancy that relied on some form of parking that was known to the Building Inspector when the garage was put up, it's at least important information to consider as part of this application that there was ultimately going to be some development there. The applicant has worked hard to try to attract other businesses, the one business he had failed, it's a difficult spot due to lot configuration and parking and the highest and best use would be to attract some sort of retail, office front, food service, but additionally they are looking to use the upstairs of that garage for the one additional apartment. It will not over tax the lot in terms of use, especially that there is no business there. If the upstairs is used for residential, the downstairs will be used for parking primarily, but now that the limo service is gone, and there are no display vehicles using up the majority of the parking spots, parking is no longer an issue. The applicant is considering purchasing the house next door, the small one, on the postage stamp lot; razing the building and incorporating that into this project so that when they do try to attract a new business they may be able to do something more grandiose and have the parking to do it because the lot next door was originally going to be an office, but it was pretty inhibited in terms of parking, and the business objectives have changed. The applicant wants to really invest in that area and improve that whole section dramatically. But in the meantime, one has nothing to do with the other. They just want to attract more business. The applicant is also thinking of his own potential business in terms of food service, a higher end situation is in

discussion. The applicant has big plans, has invested a lot of money in the property with connecting to town water, and the septic improvements and making hundreds of thousands of dollars in terms investments. He's in this for the long haul and is trying to get the highest and best use. He now has grander visions in terms of expanding next door. He wants to be a part of this community in terms of the mixed use property. Anything the Board can do to help would be helpful. The purpose of the continuance was to address the two issues which they feel they've found the most information that exist on those issues and they ask that they grant the variance to allow one further residential apartment in accordance with the plans.

Comments from the board include Joe Polin's comment that at the time of there was discrepancies in terms of foundation rules in terms of encroachment. At the time of the construction of the garages it was expressly permitted for storage and storage space. But at the time it was permitted current zoning regulations were in place. At the time of that construction it was well known to the original owner that the limit would have been two housing units on that property.

Claire recommends not looking at the past, let's look forward. They can't look at the fact that they may be purchasing the property next door. What happened previous is not his fault. He's coming to us with something he was handed. She doesn't want to look at the past owner, and what the owner did. Robb thinks it's important to look at what we started with, but also thinks we have to go forward and it needs to be addressed. Middlesex in general looks pretty good and that area could look better and he believes that's what the applicant has in mind and he's done some of that already. The B-2 Zone is a unique zone that allows business and dwelling together. As a board, they have heard talk of a mixed use in the center of town so people can live there, walk to a shop, and that's what Robb sees this becoming. There are things you can do from that site and he'd like to encourage that. He agrees this is not without issues. He believes the easement issue has been addressed. The biggest question is: are we comfortable going from office to domicile. Robb states that it was requested for office space, but that was as far as it ever went. Joe Polin states that it was never permitted, it was hand written on stationary. Peter clarifies that was to be part of the building permit application. Peter reminds that they have scaled back their request from 2 residential apartments to 1 unit as to not over tax the lot to balance everyone's interest. Joe reminds that the original documentation does not reflect any action from any board, the board did not take any action to generate his original hand written note.

Robb says if they feel that site could support one more unit, that's something this board could make a decision on this evening.

Peter says in a B-2 Zone, you can have a max of 2 residential units, but you can have as many businesses as the site will hold without coming before the

board. So, technically, without putting occupants up there wouldn't have required a pass through from this board. If it were a business they would not have to go through the ZBA.

Claire requests clarification on the proposed residence. It will be approximately 2,000 sq. ft., with 3 bedrooms above the garage. It will have 2 entrances, with a long hallway and will go by building code, and have inspections.

There is no further discussion.

Claire Cloutier motions to close the public portion of the hearing, 2nd by Joe Polin.

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	AYE

Vote 4-0 – unanimous

Reminder, this does require a unanimous vote.

Claire Cloutier motions to **approve** the Variance of Zoning By-Laws 2.11.30 AND 2.11.44 to keep current business uses but increase residential rental units from 2 apartments to 3 apartments in a B-2 Zone, 2nd by Robb Kydd.

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	OPPOSED

Vote 3-1 – Denied

Joe Polin explains he is opposed due to the increasing of the non-conformance of the existing pre - non existing conditions of that building coupled with the fact that it was on an easement and it did not meet setback requirements and it's increasing the non-conformity of the property.

ATTORNEY DOUG C. DESCHENES FOR BECKY L. PLOURDE – 59 Bowers Ave.,

Assessors Map 26, Lot 54; Request a Variance from the requirements of Section 2.12.50 of the Zoning By-Law, and a Special Permit under Section 2.15.24 of the Zoning By-Law to construct a second story and garage to the existing single family home in an R1&R2 Zone. *Advertised in the Lowell Sun Thursday, August 25, 2011 and Thursday, September 1, 2011*
 ← **continued from September 8, 2011**

The Legal Notice was read. Town Boards notified. Abutters Notified. No abutters were present against the applicant. This is a continuance. Cheryl Bradley was not present at the original meeting. The members involved in this application are: Robb Kydd, Christina Mechalides, Joe Polin, Claire Cloutier and Scott Bordeleau.

Attorney Douglas C. Deschesne was present and representing the applicant Becky L. Plourde, and Phil Thibeault the architect. On September 8, 2011 there was a discussion about the proposed addition. They subsequently went back and spoke with the client, the architect, in addition to a number of people in the neighborhood. The special permit criteria in the By-Law says the board can grant this permit to expand this home provided that the board determines that the alteration will not be substantially more detrimental or injurious than the existing structure. Their position is proposed addition is beneficial and not detrimental. The original petition called for a small relief in the front yard, this has been pulled back to meet 20' front yard setback, which removes the front yard variance. There is still a question of whether you need a variance to add to a nonconforming structure. One of the questions raised previously was would this addition impact snow removal for the Highway Department. There will be no impact on traffic. The existing driveway and the existing wall will be retained with the exception of the area that will be cut open to make the new driveway to the garage. There will be more space for the plows to push the snow. It will be pushed into the exiting driveway, and a second opening in the wall for the snow to be pushed off the road. The house to the left is set quite close to the road. The proposed addition will set back farther from the road than the house on the left, and in no way will it affect sight distances traveling up and down the road. With the addition of the garage and a new driveway will double or triple available off street parking, therefore requiring no additional off street parking.

The applicant has employed a professional engineer, and architect and legal counsel to make sure the proposed addition was done correctly and not impinge on neighbors or neighborhood. There are nice trees between the neighbors that will be retained by doing the addition as proposed. This will increase the value of the home; make a home in the neighborhood nicer, making the other homes in the neighborhood more valuable. This would be an aesthetic improvement of the home and neighborhood. None of the departments who have submitted Request for Comment, including the Highway Department have any negative comments. Conservation reminded the applicant they would need to apply for a notice of intent when they are ready to move forward. The silence is an indication that there are no concerns or issues. The last comment is regarding what the neighbors think.

The applicant went out, knocked on doors, met with neighbors up and down Bowers Avenue and 23 of the neighbors signed a petition that they support the proposed addition. Not a single neighbor provided any objections or opposition to the proposed addition. It's safe to say that the neighbors support this. Neighbors on either side of the property have signed the petition. There are neighbors at the meeting to speak in support of the applicant's request for the proposed addition, including Curtis Arata 55 Bowers Ave, and owns land across from the applicant. He was elected as a member of the community to speak in support of the applicant. It would be a wonderful addition to the neighborhood. He was the previous owner of the applicant's property. They are very happy with the neighbor and with what she's doing. Laurie Arata, 55 Bowers Ave spoke in support of the applicant. Attorney Deschenes discusses the variance and what variances are required to increase nonconforming nature of the lot.

Joe Polin states Section 2.15.22 (not 2.15.24) pertains itself to changes, extensions and alterations which clearly this application falls under; 2.15.11, which deals with lots that are not built on, and is meant for existing lots with a proposed structure. Section 2.15.12 is the appropriate section that we are addressing, changes, extensions and alterations and 2.15.24 would be the special permit section, and 2.15.22 would be the changes, extensions and alterations not substantially more detrimental to the residential dwellings.

Chris Mechalides wants clarification on the size increase to the proposed structure. They are adding 240' living space on the first floor and a garage of 680 sq. ft. The major component is the 1650 which is the second story. Total new living space is slightly more than doubling. This house is going from 2 bedrooms to 4 bedrooms and not going any closer to the sides. It's not going to be a boardinghouse.

There is no further discussion.

Joe Polin motions to close the public portion of the meeting, 2nd by Scott Bordeleau.

Robb Kydd	AYE
Chris Mechalides	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

Joe Polin motions to include Variance for Section 2.15.22 to allow changes, extensions and alterations to a nonconforming structure that will not be more substantially detrimental or injurious to the neighborhood at Bowers Ave.; Variance to Section 2.12.50 for Variance to minimum lot area; and 2.12.50 Variance on front setback to 20' max, no increase to side lot lines, no increase to rear lot line, 2nd the motion by Chris Mechalides.

Robb Kydd	AYE
Chris Mechalides	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

Joe Polin motions to **approve** a Special Permit for Section 2.15.24 of the Zoning By-Laws to structurally change and allow extension and alteration of existing nonconforming structure per plans submitted, 2nd by Claire Cloutier.

Robb Kydd	AYE
Chris Mechalides	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

BILL LeTENDRE – 224 LAKEVIEW AVE., Assessors Map 31A, Lot 17; Request a Variance from the requirements of Section 2.12.50 and a Special Permit under Section 2.15.22 & 2.15.24 of the Zoning By-Law to renovate pre-existing, nonconforming structure; existing structure to be razed in a B-1 Zone. *Advertised in the Lowell Sun Thursday, September 29, 2011 and Thursday, October 6, 2011*

The Legal Notice was read. Town Boards notified. Abutters Notified. No abutters were present to speak for or against the applicant.

Joe Polin motions to waive the reading of the abutters list, 2nd by Claire Cloutier.

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	AYE

Scott Bordeleau

AYE

Vote 5-0 – Approved – Carries Unanimous

Robb Kydd discloses that he is familiar with Mr. LeTendre, however, this relationship will not effect his decision in this meeting. Scott Bordeleau discloses he is familiar with Mr. Mercier, however, this relationship will not effect his decision in this meeting.

The applicant represents himself. He is requesting a Variance to Section 2.12.50 for the lot size of 8,264 feet and one area on the property width needs 12' 4". The applicant is also requesting a Special Permit for Section 2.15.22 to change, extend or alter a nonconforming structure. This change will not be detrimental to the area they will be an improvement, and a Special Permit to Section 2.15.24 for the height change from a single level structure to a two-story structure.

Chris Mechalides is a neighbor, not an abutter. Chris shares that there are two existing houses in the neighborhood that have made similar alterations. One did have to come before the board, the other did not. This looks like it fits in with the neighborhood, much better than the existing structure that is there. Town Sewer and Water are available in this area.

Joe Polin says this house was built before current Zoning By-Laws. Side yard setback would normally be 15'; we are allowing for preexisting lots 10', there is discussion about the bowtie shape of the lot.

Joe Polin motions to close the public portion of the meeting, 2nd by Cheryl Bradley.

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

Scott Bordeleau feels this will be an improvement to the neighborhood. Robb believes this will make this property similar to the homes in the neighborhood.

Joe Polin motions to approve a Variance on Section 2.12.50 to **grant** relief of 8,264 sq. ft. for square footage of lot; Section B on the same to **grant** Variance on minimum lot width requirement to grant relief of 12' 4"; to **grant** Variance for Section 2.15.22 to allow change, extension or alteration, and in this case raze such that extension, change or alteration is not substantially more detrimental or

injurious to the neighborhood than the existing nonconforming structure or use.
Motion 2nd by Scott Bordeleau.

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

Joe Polin motions to approve a allow a Special Permit of 2.15.24 – Residential Dwelling for proposed plan submitted by Bill LeTendre dated October 13, 2011 for 224 Lakeview Ave., to abide by setbacks and building plans as presented this day inclusive of main house and rear deck, 2nd by Cheryl Bradley.

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

BAHAMA BREEZE/SITE ENHANCEMENT SERVICES – 413 MIDDLESEX AVE.,
Assessors Map 11, Lot 23; Request a Variance from the requirements of Section 3.11.44 (1) of the Zoning By-Law, and a Special Permit under Section 3.11.44 (2) of the Zoning By-Law to install a second wall sign over the front elevation facing the parking area (approximately 75 SF) and update existing pylon with new cabinet, no change to location (will require Special Use Permit) in a B-3 Zone. *Advertised in the Lowell Sun Thursday, September 29, 2011 and Thursday, October 6, 2011*

The Legal Notice was read. Town Boards notified. Abutters Notified. No abutters were present to speak for or against the applicant.

Joe Polin motions to waive the reading of the abutters list, 2nd by Cheryl Bradley.

Robb Kydd	AYE
Cheryl Bradley	AYE
Chris Mechalides	AYE
Claire Cloutier	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

The applicant is represented by Shawn Smith, with Site Enhancement Services, who represents Darden and their branding initiatives for all of their concepts. Bahama Breeze is a Darden restaurant concept. Darden is the parent corporation. Other concepts include, but are not limited to: Red Lobster, Olive Garden, Capital Grill, and Longhorn Steakhouse. Smokey Bones is no longer with Darden. There is no other Bahama Breeze within New England; this will be the first one. The menu item is a Caribbean theme which changes quarterly.

The Variance requested is for wall signage facing the parking lot. Code does allow 100 sq. feet of sign area. This site is unique based on the long and narrow area of the lot with two access points. The sign that is proposed on Middlesex Road is 75 sq. ft.; code also allows 20% of the side area which they would never encompass. On the front elevation the proposed sign is 74.8 sq. ft. which is approximately 4% at the side area and then on the right elevation they will occupy 3.2% of that area which faces Middlesex Road. The building sets back approximately 74' front the road. The proposed front elevation sign is beyond that, it is more intended with the same kind of condition existing at the Olive Garden across the street. They have a long parking lot and they have a sign over their front entrance, one that faces Middlesex Road and they also have a monument sign. The condition at Carrabbas is similar as well. The applicant is requesting additional relief for the number of signs and they feel they are within the intent of the code based on the intent of not exceeding the 20% sq. footage or exceeding 100 sq. ft. Unfortunately they are over the square footage allowance due to the makeup and design of this property and the length of it from the existing freestanding sign to the first entry road, if you are traveling south is approximately 281 feet. The additional wall sign will give advance notice to the motorists traveling south. The wall sign on Middlesex is for northbound traffic. The visual impact will be minimal.

In 1998 the Board approved a Special Use condition for a 50 sq. ft. sign, 20' in overall height in a B-2 Zone. There was an existing pole sign on the property. The pole is still there. They are proposing to use the existing pole if it will support the proposed sign to identify the property and the new business. They want to maintain existing conditions on the property as well.

There is discussion with the Board regarding the existing and proposed sign locations and size, and lot area. The board discusses the proposed illumination of LED signs color, non-blinking and day and night view, etc.

Joe Polin speaks as a citizen regarding documentation from the Building Inspector and the proposed plans. Section 3.11.44 which covers Business 3 District, General Shopping and Retail District as per the memo per the Building Commissioner, Paul Welcome, he'd like to address the current

zoning which allows one (1) attached sign of not more than 100 sq. ft. oriented to each street on which the premises has frontage. Each sign for the building is approximately 75 sq. ft. so that is well within the 100 sq. ft. Smokey Bones was allowed to keep a sign towards the front of Middlesex and gave them a second smaller sign toward the parking lot, if you consider the parking lot side as main entrance. The two problems that Joe sees are with the freestanding signs which would be the coloration of the sign with red or green color in line of sight with traffic lights requires signoff from the Police Commissioner. The other thing is that Paul Welcome points out the freestanding sign as per Section 3.11.44 Paragraph 2 allows one (1) freestanding sign for a business on one lot such signs shall be no more than 25 sq. ft. not more than 8' high. Proposed sign looks to be 50 sq. ft., sitting at 14.8' high.

Discussion of obtaining police signoff on as a condition of granting the Special Permit.

Chris Mechalides motions to close public portion of the hearing, 2nd by Cheryl Bradley.

Robb Kydd	AYE
Cheryl Bradley	AYE
Chris Mechalides	AYE
Claire Cloutier	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

Chris Mechalides motions to **grant** a Variance to Section 3.11.44.1 to Bahama Breeze at 413 Middlesex Road to install a second wall sign facing the parking area. Sign will be approximately 75 sq. ft., 2nd by Claire Cloutier.

Robb Kydd	AYE
Cheryl Bradley	AYE
Chris Mechalides	AYE
Claire Cloutier	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

Chris Mechalides motions to **allow** a Special Use Permit to Bahama Breeze at 413 Middlesex Road to update the existing Pylon that had been previously granted. This freestanding Pylon sign will be no more than 50 sq. ft., with a height of no more than 20 sq. ft. max height, illuminated on both sides per Section 3.11.44.2, the Special Permit is subject to approval by the Tyngsborough Police Department with regards

to the red and green colors being shown on the sign within line of sight of traffic, 2nd by Scott Bordeleau.

Robb Kydd	AYE
Cheryl Bradley	AYE
Chris Mechalides	AYE
Claire Cloutier	AYE
Scott Bordeleau	AYE

Vote 5-0 – Approved – Carries Unanimous

OTHER BUSINESS

There was a 9th grade student in the audience researching municipal meetings. She requested clarification on the process of the hearing, including meeting continuances, which board members were voting on the hearings and why, the order of the vote for Variance and Special Permit, etc.

Discussion of 53G existing and required account balances

1. Request replenishment of 53G account balances for Maple Ridge/Dakota

Update on Wynbrook – 6 units sold this year were single level design

ADMINISTRATIVE:

Next Scheduled Meeting – November 10, 2011

Administrative:

Motion to Adjourn by Joe Polin, 2nd by Scott Bordeleau.

Robb Kydd	AYE
Chris Mechalides	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE
Joe Polin	AYE
Scott Bordeleau	AYE

4-0, Motion to adjourn – unanimous

Meeting adjourned at 8:45PM